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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1037

STAR CHOPPER COMPANY, INC.,
PETITIONER,

v.

PAULA H. ROY, et al.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF RESPONDENT PAULA H. ROY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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Respondent Paula H. Roy (plaintiff below) respectfully submits that the petition for a writ of certiorari (cited herein as "Pet.") should be denied. Respondent Roy concurs in the petitioner's statements under the headings *Opinions Below, Jurisdiction* and *Constitutional Provisions Involved* (although respondent submits that no constitutional issue is in fact presented). The appendix to the petition ("Pet. App.") is incorporated herein by reference.

Questions Presented

1. Did the trial judge err in his conduct of the polling of the jury?

2. Did the trial judge err in his choice of the applicable law?

Statement of the Case

This is a products liability case. Jurisdiction of the district court was founded upon diversity of citizenship. The plaintiff, Paula H. Roy, was severely injured when her left hand was caught and crushed in a set of pinch rollers manufactured by the defendant, Star Chopper Company, Inc. This injury occurred in the course of plaintiff's employment with third-party defendant Advanced Materials Systems, Inc. (AMS).

The jury found that the defendant's machine was defective and returned a verdict of $348,000 for plaintiff on the strict liability count. On the defendant's third-party claim for implied contractual indemnity against AMS, the jury returned a verdict in favor of AMS. The jury was polled *only* on its verdict in the third-party action, not on its verdict in the plaintiff's case against the defendant. The judgment of the district court entered upon the verdict was unanimously affirmed by the court of appeals.

Reasons Why the Writ Should Not Be Granted

I. This Is an Ordinary Diversity Tort Case, Presenting No Issues of Sufficient Importance To Justify Review in This Court.

The petition is devoid of even colorable reasons for granting the writ. The questions presented deal with matters of the most mundane kind: the manner of polling a jury and the choice of the applicable law. These are manifestly not the kinds of questions that command the attention of this Court. There is no split of opinion among the circuits on these questions; nor do they involve the construction of any federal statute or rule. The jury-polling question does not even raise a constitutional issue, being merely a matter of trial court housekeeping; and although petitioner purports to raise a constitutional issue under the choice-of-law question, it does not cite a single case holding, or even suggesting, that there is a due process problem in applying the law of more than one state to different issues in the same case. The petition clearly should be denied for lack of importance of the issues presented.

II. The Trial Court Properly Conducted the Polling of the Jury on Its Verdict in the Third-party Action.

The petition at pages 5-6 fails to set forth the polling of Juror Carnevale in its entirety. The complete colloquy is as follows (Opinion of the First Circuit, Pet. App. at 20a):

> THE CLERK: Mrs. Carnevale—
>
> JUROR CARNEVALE: Could I ask, I need help, I think. I'd like to ask someone a question, I don't know who to ask.
>
> THE COURT: That's not the point, Madam; the point is this is your verdict sheet. The question is when you voted, "Do you find for Star Chopper Company, Inc. or Advanced Materials System, Inc.?" all right—
>
> JUROR CARNEVALE: Advanced Materials Systems.
>
> THE COURT: Is that clear enough to you?
>
> JUROR CARNEVALE: Yes, your Honor.
>
> THE COURT: All right.
>
> THE CLERK: Do you find for Star Chopper Company, Inc. or Advanced Materials Systems, Inc.?
>
> JUROR CARNEVALE: Advanced Materials Systems.

The trial judge handled the matter properly. There was not the slightest suggestion that Juror Carnevale dissented from the verdict. When a juror appears hesitant, nervous, or confused, the trial court's function is solely to ascertain what the juror's verdict is. *Eulo* v. *Deval Aerodynamics, Inc.*, 47 F.R.D. 35, 51 (E.D. Pa. 1969), *modified on other grounds*, 430 F.2d 325 (3rd Cir. 1970), *cert. denied*, 401 U.S. 974 (1971). The object of the jury poll is to determine whether each individual juror agrees with the verdict, not to determine how the jury arrived at that verdict. *See, e.g., Grace Lines, Inc.* v. *Motley*, 439 F.2d 1028 (2d Cir. 1971); *Dixon Stave & Heading Co.* v. *Archer*, 40 Tenn. App. 327, 291 S.W.2d 603 (1956). The court of appeals disposed of petitioner's argument on this point in two sentences (Pet. App. at 20a).

III. There Is No Evidence That the Verdict of Juror Carnevale Was Coerced.

Under the heading of *Questions Presented*, petitioner makes the astonishing assertion that "the record reveals that the juror was coerced in the jury room." (Pet. at 2.) In fact, the transcript of Juror Carnevale's subsequent conversation with the trial judge in his chambers clearly shows that the only "coercion" to which she was subjected consisted of arguments by the other jurors that they were right and she was wrong. Out of sympathy for petitioner, Juror Carnevale had wanted to vote for petitioner against respondent AMS; but the other jurors convinced her that the law required a verdict in favor of AMS. In her own words:

> We argued about it for a long time. I was the only one who felt that way. They were five who didn't and then they talked, they talked me into it. They made me understand that's the law, it isn't how you feel, it's the law that counts.
>
> THE COURT: Which of course is right.
>
> MRS. CARNEVALE: And I felt, well, they were right and that's why I voted. [Pet. App. at 24a-25a.]
>
> * * *
>
> MRS. CARNEVALE: When you say "forced" they didn't have gun in my back.
>
> THE COURT: Well, I know.
>
> MRS. CARNEVALE: I mean, they made me feel, well, the law, you have to go by the law, not what you feel. [Pet. App. at 26a.]

As the court of appeals stated, "[t]his falls far short of a showing of force or coercion by other members of the jury." (Pet. App. at 20a-21a.) The fact that a juror may have concurred in the verdict "reluctantly only out of deference to the views of the others and to avoid a hung jury" does not affect the validity of the verdict. 9 C. Wright & A. Miller, *Federal Practice & Procedure*, §2504, at 491 (1971).

Furthermore, petitioner's argument that the verdict was coerced belies its subsequent assertion that "[t]his is not a case of a juror impeaching her own verdict" (Pet. at 5). That is exactly what this is. There is not a shred of evidence in the record of the jury poll that Juror Carnevale was coerced; the only evidence of purported "coercion" is in her unsworn statement to the trial judge the next morning. But that statement is clearly not admissible to impeach the verdict, Fed. R. Evid. 606(b), as both the trial court and the court of appeals properly held (Pet. App. at 21a). The dangers of receiving such evidence have been too well and too often stated to need repetition here. *McDonald* v. *Pless*, 238 U.S. 264, 267-268 (1915); Advisory Committee Note to Fed. R. Evid. 606(b); 3 J. Weinstein &

M. Berger, *Weinstein's Evidence* ¶ 606[03], at 606-25 (1978).

IV. The Court Below Properly Chose the Applicable Law, and No Constitutional Rights of Petitioner Were Violated Thereby.

Petitioner complains because the trial court applied the Rhode Island law of strict liability to the case in chief and the Massachusetts law of indemnity to the third-party claim. It argues that this procedure somehow violated its due process rights. The argument is without merit.

In the first place, petitioner misstates the procedural history of the case. Its whole argument is based on the premise that "[i]n order to hold the defendant liable, Rhode Island's law of strict liability had to be . . . applied" because "Massachusetts does not recognize strict liability and there was no finding by the jury that the defendant was negligent. . . ." (Pet. at 10.) Petitioner neglects to mention the fact that respondent Roy voluntarily dropped her negligence count before the case went to the jury when the trial judge ruled that he would apply Rhode Island's law of strict liability to the case in chief. This was a tactical choice based upon the trial judge's ruling. Had the trial judge applied Massachusetts law to the case in chief, respondent Roy would not have dropped the negligence count; there would most probably still have been a verdict for respondent Roy in the case in chief (the evidence of negligence was overwhelming); and there would certainly still have been a verdict against petitioner on its third-party claim against respondent AMS. Petitioner's faulty premise vitiates its entire argument on this issue.

More fundamentally, however, petitioner's argument simply fails to present a substantial federal question. The courts below properly applied Rhode Island's choice of law

rules, as they were bound to do under *Klaxon Co.* v. *Stentor Manufacturing Co.*, 313 U.S. 482 (1941). Rhode Island has adopted the modern interest-balancing approach to choice of law, which "dissects an action into various elements, *and governs each individual element or issue by the law of the jurisdiction which has the most significant contacts relative thereto.*" *Woodward* v. *Stewart*, 104 R.I. 290, 293, 243 A.2d 917, 919-20 (1968) (footnote omitted) (emphasis added). As the detailed analysis given in the opinion of the court of appeals clearly shows, the interest-balancing criteria set forth in *Woodward* plainly mandate the application of different law to the third-party claim than to the case in chief. (Pet. App. at 3a-11a).

It is commonplace under modern choice-of-law rules for the law of different states to be applied to different issues in the same case. *E.g.*, *Brown* v. *Church of the Holy Name of Jesus*, 105 R.I. 322, 331 & n.10, 252 A.2d 176, 181 & n.10 (1969); *Woodward* v. *Stewart*, *supra*, 104 R.I. at 300-01, 243 A.2d at 923-24. This respondent is not aware of any case that has ever suggested that this procedure violates due process; and petitioner cites none. It is conceivable that a state might have so little contact with a case that application of its law would be constitutionally impermissible; but this is hardly such a case. Massachusetts had all the significant contacts with the employment relationship upon which petitioner's claim for noncontractual indemnity was based (Pet. App. at 9a), and the application of Massachusetts law to bar that claim was entirely proper.

V. Even if Certiorari Is Granted, Plaintiff Paula H. Roy Is Not Properly Brought in as a Party Respondent.

Petitioner's arguments in this Court involve only the third-party claim and not the case in chief. This is clear on the face of the record.

Respondent never requested that the jury be polled on its verdict in the case of *Paula H. Roy* v. *Star Chopper Company, Inc.* After the verdict was returned, the judge read the answers written on the verdict sheet and asked the members of the jury whether each of them so found. All of the jurors responded "yes." The court then asked defense counsel if he wished to have the jury polled. He replied:

> MR. LaFAZIA: On the third question, yes, your honor—excuse me. I guess it's the fourth question.
> THE COURT: You mean Star Chopper versus Advanced Materials Systems?
> MR. LaFAZIA: Yes, your Honor.[1]

The court then proceeded to poll the jury *only* on the verdict in the third-party action. Thus, nothing which transpired between Juror Carnevale and the court reflected any doubt on the verdict on behalf of respondent Paula Roy or the amount of that verdict.

The conference the next day between the judge and Mrs. Carnevale further emphasizes the unanimity of the jury with regard to the verdict on behalf of Paula Roy (Pet. App. at 24a.)

> THE COURT: First, let us look at the case in its entirety; there were two cases. Now, as I understand it as far as the case of Paula Roy v. Star Chopper you had no problem with that and you agreed to that.
> MRS. CARNEVALE: Yes.
> THE COURT: As far as the case of Star Chopper v. Advanced Materials Systems, that was the case that bothered you very much.
> MRS. CARNEVALE: Yes. I thought it odd that you should ask.

[1] This colloquy is taken from the transcript of the jury's report of its verdict on October 6, 1977, which was printed at pages 182A-182C of the Record Appendix in the court of appeals.

> THE COURT: Now, that is the fourth question.
> MRS. CARNEVALE: The fourth question bothered me.
> THE COURT: Okay. Is what I state correct?
> MRS. CARNEVALE: Yes.
> THE COURT: So that the only thing that bothers you is the fourth question.
> MRS. CARNEVALE: And I thought it odd that you should ask us all. Why did you ask us?

It is thus evident that the jury was clear and unanimous in its verdict in favor of respondent Paula Roy against petitioner Star Chopper Company. Consequently, the error complained of by petitioner in this Court concerning the polling of the jury cannot affect the validity of that verdict.

With respect to the choice of law issue, petitioner clearly does not argue that the courts below erred (constitutionally or otherwise) in applying Rhode Island's law of strict liability to the case in chief. Rather, petitioner argues that, because Rhode Island law was applied to the main case, petitioner was constitutionally entitled to have Rhode Island law applied to the third-party claim as well. (Pet. at 9-11). This argument cannot have any effect on the verdict and judgment in favor of respondent Roy; a reversal on this ground would only mean that the third-party claim would be retried under Rhode Island law.

Accordingly, if this Court should determine to grant certiorari, respondent Roy respectfully requests the Court to enter an order dismissing her as a party respondent and expressly stating that the verdict and judgment in the main case are not affected by the grant of certiorari.

Conclusion

This is an ordinary diversity tort case. It was fairly tried before an able and experienced trial judge. The judgment of the district court entered upon the jury's verdict was unanimously affirmed by the court of appeals. No error was committed by either of the courts below. The issues raised in the petition are manifestly not of sufficient importance to justify review in this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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